



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

**Honorable Tom DeBerry, Member  
State Board of Control  
Austin, Texas**

**Dear Sir:**

**Opinion No. 0-1857  
Re: Powers of Board of  
Control respecting  
discharge of em-  
ployees of San  
Antonio State Hospital.**

**In your letter of January 20, 1940, you re-  
quest our opinion in response to the following questions:**

**"1. Does the Board of Control,  
having 'the general control, management  
and direction of the affairs, property  
and business of all eleemosynary insti-  
tutions vested in it' (Art. 3174), and  
having the power to 'appoint all offic-  
ers, and employes of such institutions,  
and fix their salaries and wages' (Sec.  
2 and 4, Article 693), have the power  
to discharge or remove of its own author-  
ity, employes of such eleemosynary insti-  
tutions?"**

**"2. Can the Board of Control remove  
or discharge employes of an eleemosynary  
institution without the recommendation of  
the Superintendent as set out in Article  
693, Section 3, or without the Superinten-  
dent 'removing for good cause, etc.' under  
Article 3176, Section 2.**

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"3. If the Board of Control has the authority to discharge or remove employees of an eleemosynary institution without action of the Superintendent, can it delegate such authority to the Chief of the Eleemosynary Division of the Board of Control, by appropriate minute?

"4. By virtue of Art. 3176, and other pertinent articles of the Revised Civil Statutes, the Superintendent is the administrative head of an eleemosynary institution with certain broad powers. Can the Board of Control delegate to the Chief of the Eleemosynary Division of the Board of Control authority to go to an eleemosynary institution and perform certain duties given to the Superintendent by Statute, when the Superintendent of such institution is in active charge and has not been legally removed?"

By letter of January 24, 1940, you advise that the institution with which you are concerned is the San Antonio State Hospital, and our opinion will be so confined.

Article 601, Revised Civil Statutes, reads:

"The State Board of Control shall consist of three citizens of this State, one to be biennially appointed for a term of six years by the Governor with the advice of the Senate, the classification to remain as now constituted by law. Any member of the Board may at any time be dismissed by the Governor for good cause, the reasons for such dismissal to be specified and filed with the Secretary of State. The members of the Board shall be public officers and shall take the official oath, and each shall give bond in form prescribed by the Attorney General in the sum of Fifty Thousand Dollars payable to and to be approved by the Governor, conditioned for the faithful performance of his duties."

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Article 693, Revised Civil Statutes, provides in part:

"The Board of Control shall have power:

"1. To make rules and regulations for the government of the State eleemosynary institutions, not inconsistent with the constitution and laws.

"2. To appoint all officers and employes of such institutions and fix their salaries and wages.

"3. To discharge, upon the recommendation of the superintendent, any officer, employe or inmate.

"4. To appoint assistant physicians, stewards, matrons and apothecaries.

"5. To make all contracts and necessary arrangements for the erection of buildings or improvements upon the grounds of the institutions.

"6. To examine and approve or reject any vouchers or accounts of the superintendents.

"7. It shall exercise a careful supervision over the general operations of such institutions and control the expenditures, and direct the manner in which their revenue shall be disbursed.

"8. It may take and hold in trust any gift or devise of real or personal estate for the benefit of such institution and apply the same as the donor or deviser may direct."

Article 691, Revised Civil Statutes, reads as follows:

"The Board shall elect a superintendent for each institution under its control. Each

superintendent shall have had special advantages and practical experience in the management of the class of persons committed to his charge. The term of office shall be two years, subject to removal by the Board for good cause."

The foregoing articles 601, 693 and 691, are all found in Title 20, while the succeeding articles are in Title 51 of the Revised Civil Statutes.

Article 3174 provides:

"Each eleemosynary institution established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such institutions is vested in the State Board of Control."

Article 3184 reads as follows:

"The superintendent of each State hospital shall be a married man, a skilled physician, and experienced in the treatment of insanity. He shall reside at the asylum with his family, and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause."

Article 3176 provides as follows:

"The Superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

"1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

"2. Where not otherwise provided by law, to appoint the subordinate officers,

teachers, attendants, and other employes, and to fix their salaries.

"3. To remove for good cause, with the consent of the Board, any officer, teacher or employe.

"4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

The power of appointment generally carries with it the power to remove. *Neeper vs. Stewart*, 86 S. W. (2d) 818. However, such power of removal may be restricted by statute. *Royston vs. Griffin*, 42 Tex. 566; 34 Tex. Jur. 394; 46 C. J. 985; *Hanchett vs. Burbridge*, 202 Pac. 377 (Utah); *Ardmore vs. Sayre*, 154 Pac. 356 (Okla.). The most frequent illustration of such a curtailment exists in those cases where the office or employment to which the appointment is made is for a fixed period of time. In such cases, the power to appoint does not carry with it the power to remove. *Collins vs. Tracy*, 36 Tex. 546; *Upshaw vs. Booth*, 37 Tex. 123; 46 C. J. 985.

Our Legislature has made specific provisions concerning the authority to remove such employees. There is nothing in the organic law of this State to forbid such action on the part of the legislative body.

Having reference to the powers of the Board of Control over the affairs of the eleemosynary institutions, Article 693 gives the Board of Control the power "to discharge, upon the recommendation of the superintendent, any officer, employe or inmate." Article 3178 provides that the superintendent shall have the power "to remove for good cause, with the consent of the Board, any officer, teacher or employee."

Article 3184 requires that the superintendent be a skilled physician, experienced in the treatment of insanity, and that he reside at the asylum. The Legislature wisely saw the ultimate deleterious effect which would follow to the organization of such an institution, if the superintendent should be denied any control over the employees. And, if he should have no voice in either the appointment or discharge of such employees, he would

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be without effective control over them. That a competent superintendent, residing at the institution and in constant supervision of its operation, who is required to be a skilled physician and to be experienced in the treatment of insanity, would be in a position to know the conduct, merits and value of the employees of the institution better than a board residing at Austin and burdened with many and varied other duties, cannot well admit of argument. The Legislature has provided for the concurrent action by both the superintendent and the Board of Control in order to accomplish the dismissal of employees of the institution mentioned by you. This answers your first and second questions in such a way that no reply is needed to the third. Your fourth inquiry is rather general, and we must ask that you kindly redraft the same so as to be more specific, if you need further information touching on the subject.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis  
Assistant

GRL:LW